



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2005

Mr. Stephen C. Jacobs
Locke, Liddell & Sapp, L.L.P.
600 Travis Street, Suite 3400
Houston, Texas 77002

OR2005-00832

Dear Mr. Jacobs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217720.

The Houston Convention Center Hotel Corporation (the "corporation"), which you represent, received a request for "all the financial records of the Hilton Americas Houston." You claim that the requested information is excepted from disclosure pursuant to section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that you indicate that the corporation sought clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You also indicate that the corporation has not received a reply from the requestor; however, you have submitted information responsive to the request for our review. We will therefore address whether the submitted information is excepted under the Public Information Act ("Act").

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See Open Records Decision No. 593 (1991)* (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See Open Records Decision No. 514 at 2 (1988).*

In your brief to this office, you explain:

The Corporation was organized in early 2000 to aid and assist the City by developing and operating a hotel near the George R. Brown Convention Center in downtown, Houston, Texas. To that end, the Corporation engaged Hilton Hotels Corporation ("Hilton") to manage and operate the hotel on behalf of the Corporation. The burdens and benefits of ownership of the hotel remain with the Corporation.

...

While the Corporation is a not-for profit, local government corporation, the excess of its revenues over its expenses will inure to the benefit of the Corporation and its sponsor, the City. . . . Disclosure of the requested information would provide an advantage to competitors. By necessity, the operation of the hotel will compete with other hotels for guests and other functions customarily held in hotels. Operating results, and other financial information regarding the historical or projected operations of the project, reflect the essence of the Corporation's conduct of its business and its strategies for maximizing revenues from the operation of the hotel.

...

Should [the requested] information be made public, the Corporation's and Hilton's pricing and costs for its main business segments would be available to competitors and would obviously provide such competitors an advantage in competing with the Corporation and Hilton in attracting business or

negotiating with potential customers. Furthermore, disclosure of costs and revenues would provide potential customers information that they would not normally have and, accordingly, an advantage in negotiating with the Corporation and Hilton in regard to use of the Corporations's various facilities. This advantage would likely result in a loss of revenues and harm to the Corporation and the value of its assets.

Based on the arguments and circumstances presented, we conclude that you have established that the corporation has legitimate marketplace interests for the purposes of section 552.104. We also find that the you have shown the possibility of specific harm if portions of the submitted information are released. We have marked the information that the corporation may withhold pursuant to section 552.104. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

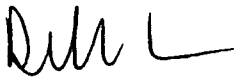
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 217720

Enc. Submitted documents

c: Mr. Jaime Flores
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(w/o enclosures)